

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICARDO T. VELEZ,
Petitioner,
v.
RALPH DIAZ, Warden,
Respondent.

NO. CV 14-183-AHS (AGR)

OPINION AND ORDER ON
PETITION FOR WRIT OF
HABEAS CORPUS

On January 9, 2014, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254. Petitioner challenges his conviction in Los Angeles County Superior Court in 2005. (Petition at 2.)

I.

PROCEDURAL BACKGROUND

Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the records in Petitioner's prior federal habeas corpus action in the Central District of California, *Velez v. Hedgpeth*, Case No. CV 08-7299-AHS (AGR) ("Velez I").

1 In December 2005, Petitioner was convicted of first and second degree
2 burglary, grand theft auto, and petty theft with a prior. (Petition at 2). On January
3 5, 2006, he was sentenced to 100 years to life. (*Id.*)

4 In *Velez I*, Petitioner challenged the same conviction. Dkt. No. 1 at 2. A
5 Report issued on the merits on October 13, 2011, recommending that the petition
6 be denied and the action dismissed with prejudice. *Id.*, Dkt. No. 63. On
7 November 9, 2011, the Court accepted the findings and recommendation of the
8 Report and entered judgment dismissing the petition with prejudice. *Id.*, Dkt. Nos.
9 66-67. On November 23, 2011, Petitioner filed a notice of appeal. *Id.*, Dkt. No.
10 70. On January 25, 2013, the Ninth Circuit denied the request for a certificate of
11 appealability. *Id.*, Dkt. No. 76. On March 15, 2013, the Ninth Circuit denied
12 Petitioner's motion for reconsideration. Ninth Circuit, Case No. 11-57127, Dkt.
13 No. 11.

14 II.

15 DISCUSSION

16 The Petition was filed after enactment of the Antiterrorism and Effective
17 Death Penalty Act of 1996 ("AEDPA"). Therefore, the Court applies the AEDPA
18 in reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059,
19 138 L. Ed. 2d 481 (1997).

20 The AEDPA provides, in pertinent part: "Before a second or successive
21 application permitted by this section is filed in the district court, the applicant shall
22 move in the appropriate court of appeals for an order authorizing the district court
23 to consider the application." 28 U.S.C. § 2244(b)(3)(A). A district court does not
24 have jurisdiction to consider a "second or successive" petition absent
25 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152, 127 S.
26 Ct. 793, 166 L. Ed. 2d 628 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th
27 Cir. 2001) ("When the AEDPA is in play, the district court may not, in the absence
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1 of proper authorization from the court of appeals, consider a second or
2 successive habeas application.") (citation and quotation marks omitted).

3 Here, the Petition is a second or successive petition challenging the same
4 conviction and sentence imposed by the same judgment of the state court as in
5 *Velez I.*

6 Rule 4 of the Rules Governing Section 2254 Cases in the United States
7 Courts provides that "[i]f it plainly appears from the face of the petition and any
8 attached exhibits that the petitioner is not entitled to relief in the district court, the
9 judge must dismiss the petition and direct the clerk to notify the petitioner." Here,
10 summary dismissal is warranted.

11 **III.**

12 **ORDER**

13 IT IS HEREBY ORDERED that Judgment be entered summarily dismissing
14 the Petition and action for lack of subject matter jurisdiction.

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16 DATED: JAN 17 2014

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18 ALICEMARIE H. STOTLER
19 United States District Judge
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